

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 957 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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C.M.RATHI

Versus

FOOD CORPORATION OF INDIA

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Appearance:

MR MD RANA for the petitioner  
MR NIRAJ ASARWA for M/s Thakkar Associate  
for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 08/10/99

C.A.V.JUDGMENT

1. The petitioner - an officer of the Food Corporation of India, by this petition under Article 226

of the Constitution of India, is praying for the following reliefs.:

- a) Writ of mandamus or any other suitable writ in the nature of mandamus be issued against the respondent and the seniority list Annexure 'C' be quashed and set aside and the respondents be directed to place the petitioner at serial No.7 in the seniority list.
- b) That the writ of mandamus or any other suitable writ in the nature of mandamus be issued against the respondent and order Annexure 'E' deciding the representation be declared as illegal and void and the same be set aside.
- c) That the writ of mandamus or any other suitable writ in the nature of mandamus be issued against the respondent by holding that the provision of Regulation 15(5) are arbitrary, discriminatory and illegal and the same be quashed from the Boom of Regulation.
- d) Pending the hearing and final disposal of petition, the respondent be restrained from giving promotion to any persons from serial No.7 onwards from the seniority list Annexure 'C' and if occasion arises, then the respondent be directed to consider the petitioner at serial No.7 and then only to give promotion to the post of Deputy Manager.
- d) Any other and further relief as the nature of the case may require, be granted in the interest of justice.
- e) Cost of the petition be provided for.

2. The facts of the case are that, on 3.7.1969 the petitioner was appointed on the post of Junior Engineer in the Corporation. Under the order dated 18.3.1976, Annexure-A at page No.19 of this Special Civil Application, he was given promotion on provisional basis on the post of Assistant Engineer (Civil/Electrical). Subsequently, the post of Assistant Engineer (Civil / Electrical) was redesignated as Assistant Manager (Civil / Electrical). Vide order dated 24.5.1980, Annexure-B at

page No.23 of this Special Civil Application, the petitioner was confirmed on the post of Assistant Manager (Electrical) w.e.f. April 1977 in terms of Regulation 15(4) of the Food Corporation of India Staff Regulation. The provisional seniority list of the Assistant Managers (Electrical Engineering) was published vide Annexure-C at page No.24 of this Special Civil Application in which the position is shown as on 30.6.1985. In the seniority list the name of the petitioner was placed at serial No.14. The petitioner submitted detailed representation against this provisional seniority list vide Annexure-D dated 30.6.1986 to the Managing Director of the Corporation. This representation was came to be rejected under the order dated 8.9.1986, Annexure-E at page No.32 of this Special Civil Application. Hence, this Special Civil Application before this Court.

3. Learned counsel for the petitioner on being asked by the court submitted that the petitioner is claiming seniority in the cadre of Assistant Manager (Electrical Engineering) above the officers named at serial Nos.7, 8, 9, 10, 11, 12 and 13. Learned counsel for the petitioner submitted that the officers at serial Nos.7, 8, 9 and 11 are direct recruitees on the post of Assistant Manager, whereas the officers at serial Nos.10, 12 and 13 are promotees. The petitioner challenges the validity of the provisions of Regulation No.15(5) of the Corporation also. This provision relates to the probation of officers and and their confirmation.

4. Learned counsel for the petitioner raised manifold contentions on the merits of the matter, and as this petition deserves to be dismissed on the ground which I am giving in the later part of the judgment, therefore, these contentions need not to be referred and discussed.

5. The provisional list was published on 30.6.1986. The petitioner filed a representation against it which came to be rejected on 8.9.1986, so, the seniority list attained finality so far as the petitioner and the persons above whom he is claiming the seniority. Learned counsel for the petitioner admits that the petitioner is claiming seniority in the cadre of Assistant Manager (Electrical) above the officers placed at serial nos.7, 8, 9, 10, 11, 12 and 13 of the aforesaid seniority list. He further admits that, officers placed at serial nos.7, 8, 9 and 11 in the seniority list aforesaid are direct recruitees on the posts of Assistant Managers. The officers at serial nos.10, 12 and 13 in the aforesaid seniority list are promotees.

6. The seniority list has been finalised or deemed to have been finalised on 8.9.1986. For all these 13 years, this list is in force. There are all the possibilities that relying on this seniority list, many of the persons above the petitioner would have been promoted to the next higher post. It is not the case of the petitioner that this seniority list was not operated. In the Special Civil Application this court has not granted interim relief in favour of the petitioner and the respondents were free to act upon and operate the seniority list. It is not the case of the petitioner that, officers above whom he is claiming the seniority, have not been promoted so far to the next higher post. Otherwise also, the petitioner when claiming the seniority list above 7 persons, all are necessary parties to this Special Civil Application. The petitioner has not impleaded any of them as party to this Special Civil Application. Any order passed in favour of the petitioner in this Special Civil Application may adversely affect their seniority and as a result thereof, future prospects and chances of promotion to the next higher post and seniority in that cadre. The petitioner should have been impleaded these persons as parties, but he has deliberately not impleaded any of them as party and the reason is very obvious, so that, he may get decision in his favour behind the back of these persons who are to be suffered in manifold ways, if ultimately, decision in the matter results in favour of the petitioner. Any order passed in this Special Civil Application in favour of the petitioner certainly results in causing prejudice to the persons above whom, he is claiming seniority. No such relief can be granted to the petitioner behind the back of these persons. The petitioner knowing well that these persons are shown senior to him in the seniority list, he still felt contended and satisfied not to implead them as parties to this Special Civil Application. As a result of this, petitioner's own inaction or omission which prima facie appears to be deliberate and purposeful, no relief of the nature as prayed in the petition can be granted in his favour. This petition suffers from defect of nonjoinder of necessary parties. Otherwise also, after 12 years of the filing of this petition, these persons cannot be ordered to be impleaded as parties as otherwise it will suffer from vice of delay and laches.

7. As a result of the aforesaid discussion, the petition deserves to be dismissed only on the ground aforesaid and accordingly the same is dismissed. Rule discharged. Interim relief, if any, granted stands

vacated. No order as to costs.

(S.K.Keshote,J.)

(pathan)